WARRINGTON'S MANUAL

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A MANUAL

FOR THE INFORMATION OF OFFICERS AND MEMBERS OF LEGISLATURES, CONVENTIONS, SOCIETIES, CORPORATIONS, ORDERS, ETC., IN THE PRACTICAL GOVERNING AND MEMBERSHIP OF ALL SUCH BODIES, ACCORDING TO THE PARLIAMENTARY LAW AND PRACTICE IN THE UNITED STATES.

BY

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PREFACE.

THE purpose of this Manual is to furnish to officers and members of legislative and other deliberative assemblies, and to societies of all kinds, a concise and practical guide in what is called "Parliamentary law." I have not thought it necessary, or even useful, to go into the history of this "law" in any respect, or to cite, to any extent, its precedents. The "law of Parliament" (to take the title of Mr. May's book) is indeed a different and far more important thing than "Parliamentary law," as the phrase is used. The "law of Parliament," being the Constitution as well as the law of England, the history of it and its principles and details become sometimes "law" in the highest sense. But in a country and in states governed by written constitutions, and where deliberative bodies are controlled by innumerable statutes and rules, often to the last degree unnecessary and useless for the end

they profess to subserve, this "law" is far less important. It has been customary to say that "rules" are for the protection of minorities. A better definition is, that they are for the speedy, fair, and orderly transaction of business, according to the will of the majority. This work, at any rate, is written upon the assumption that members of societies, orders, municipal bodies, and legislatures, are on an equality. If, to use the language of the Massachusetts Constitution (Art. IX. of the Declaration of Rights), "all elections ought to be free; and all the inhabitants of the commonwealth . . . have an equal right to elect officers and to be elected for public employments," it seems to follow that all members of legislative and deliberative bodies ought to be substantially upon an equality; at any rate, that the minimum, and not the maximum, of power and influence ought to be put into the hands of committees and presiding officers. This Manual is prepared upon that theory. The House of Representatives at Washington has tied itself up with rules so that its speaker, who should be its servant, and of little if any more importance than any other member, is in reality the *second or third officer of the government itself.* Probably in a few years, when Congress shall have relinquished the

attempt to make laws, not only for the National Government, but for states, cities, towns, and private corporations, or when it shall have put into hands of other bodies the duty of taking evidence and collecting facts on which to proceed in the making of statutes, the old practice will be resumed.

I have deemed it unnecessary and even a hinderance, to persons having occasion to use a book like this, to make a large volume. It has cost me a good deal of time and labor to make it small enough. But with the object I have already indicated, the plan on which it has been prepared has seemed to me a tolerably good one. It is a mixture of rule, advice, and "parliamentary" principle, founded on the experience and the obvious necessities of bodies governed by the "Parliamentary law." As everybody knows, an assembly may, if it pleases, make rules for itself diametrically opposed to this law or principle. Those "rules" are innumerable, and it is of no practical use to try to classify, illustrate, or mention them. Such of them as are based on correct principles will be found here. But, for the largest part, this book seeks to give the reasons for the ordinary and the best practice of the best ordered bodies. Given the *reasons*, and the practice adjusts itself; the assembly transacts its

work speedily and with proper regard to the rights of all; and officers are prepared to meet objections and to answer questions with little or no hesitation. Without the *reasons*, members and officers have great difficulty in interpreting the rules, and in coming to just results without troublesome delays. The following, from an address delivered before the Literary Societies of Dartmouth College by Rev. Edward Everett Hale, will further illustrate the objects I have had in view. How well I have succeeded, the public must judge. Said Mr. Hale, —

"It was my fortune, once, to sit for several days by the side of the late Governor Andrew of Massachusetts while, with skill and success which I will not pretend to describe, he presided over a large, excited assembly, which, but for his admirable gift, would have been stormy. When all was done, I ventured to felicitate him on his success. 'I think I have succeeded,' said he, 'and I believe it is because, in all my life, I have only for three or four hours been in the chair of any assembly. I believe it is because I know nothing of the technics of parliamentary law. I mean,' he added with earnestness, 'that I have been trying all through these days to apply the principles of justice, of truth and

common sense in the forms, which were of course familiar to me, of deliberative assemblies.'

"Gentlemen, I could not but contrast that verdict with the verdict of one of your own statesmen who stood with me one day in the gallery at the Capitol, as an acute parliamentarian, who has thus far never been anything but an acute parliamentarian, dissected some point of order to the bottom. 'I would not,' said your senator, 'know as much as that man knows of Parliamentary law, no, not if you gave me the world!' Take that as a not unfair contrast of the difference between principle and method, if, by any misfortune, either must be learned alone."

I wish only to say, in concluding this preface, what I have in the work itself tried to make clear, that wherever I have left it in doubt whether the principle laid down may be considered authoritative, it should, if approved, be provided for by rule. It is, of course, understood that it is necessary to make a rule whenever the principle is departed from. *The rule governs; but if the rule be obscure or contradictory, let it be tried by the principle.*

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officer may act in such capacity and "attest" proceedings. The report of a committee that a secretary or clerk is elected, must be declared from the chair, and acquiesced in. If questioned, the assembly may take such measures as it sees fit to ascertain its own will, or it may, after acquiescence, elect other officers. It ought not, however, to proceed to a new election without giving due notice, except in the case of the resignation of an officer.

2. I have known a presiding officer *pro tem.*, after he has heard a name mentioned for chairman, to receive another name as an *amendment.* This is not an amendment, and the first name cannot be superseded in this way. If not acceptable, it can be voted down, and the questions then come on the names successively given and heard.

3. A nomination, being a motion, may, in the absence of a rule to the contrary, be debated; but it is not regular to debate the merits or claims of candidates pending a proposition to proceed to a ballot.

4. It is often provided in constitutions, or by

statute, that a less number than a quorum of a legislative body may organize, adjourn from time to time, and compel the attendance of absent members. This power *in legislatures* must be implied when not expressed; and it involves the right to exercise all needful powers to such an end. The roll may be called; and all questions as to subpœnas and fines are included in this remark. In other words, the body must have and may exercise all powers necessary to keep itself in existence, and carry on the functions appointed to it by law. This rule does not apply to societies, &c., unless the power is given them by statute.

5. Unless provided for otherwise, by constitution, statute, or rule, a majority is a quorum. Those who respond to the warrant or call constitute the meeting.

6. A vote which exhibits the lack of a quorum (with the exceptions noted in section 4) is null and void, even though it be made manifest to the presiding officer by previous proceedings that a quorum is present. A quorum is "a quorum to do business."

Duties and Powers of the Presiding Officer.

7. The presiding officer takes the chair at the hour to which the assembly was adjourned; calls the members to order; and, on the appearance of a quorum, proceeds to business. It is not deemed necessary for him to make an actual count of the assembly before he calls it to order. It is sufficient that there appears to him to be a quorum. The fact can be questioned by any member before business is performed. If a quorum is despaired of, the presiding officer may so state, and the body may be adjourned by him, though it will be more regular to await a motion for adjournment. The absence of a quorum may be raised at any time as a point of order, but the floor cannot be taken from a member for such a purpose; debate not being, in this instance, the transaction of business.

Questions of Order; Appeals.

8. It is the duty of the presiding officer to preserve decorum and order; he may speak on

points of order in preference to other members; and he decides all questions of order, subject to an appeal to the assembly by motion regularly seconded; and no other business is in order till the question on the appeal has been decided. There is a provision in the General Statutes of Massachusetts that "the moderator . . . shall decide all questions of order." I suppose that even under this statute, which recognizes no appeal, the presiding officer might submit a question of order to the meeting; but he would not be obliged to do so. Doubtless there is good reason for not recognizing the right of appeal in town meetings, and for vesting in the "moderator" a more arbitrary power than would be intrusted to him in other deliberative bodies.

The right of appeal seems to be indispensable to the free action of all assemblies, the presiding officer not being the master, but the servant. The "speaker" of a legislative body, for example, is so called, because he speaks *for* the body.

The requirement that an appeal shall be "regularly seconded" is not often insisted on by the

presiding officer; but it is proper in view of the fact that there may be times when one person may insist upon raising trivial questions and taking factious appeals.

9. The form of putting the question on an appeal is, "Shall the decision of the Chair stand as the judgment of the House?" (or whatever may be the name of the assembly), as it is but fair that the presiding officer's decision shall have the advantage of the affirmative side of the question. A majority of questions of order likely to arise can be decided without delay by any presiding officer at all familiar with parliamentary proceedings. Appeals should not be taken on mere *dicta*, drawn out by interrogations on points of order. New and difficult questions are constantly arising. Upon these, unless the presiding officer is clear, it will be best for him to hear a statement of the grounds of the appeal before exercising his right in preference to others; and cases sometimes arise in which he will do well to withhold a decisive opinion until after such a statement. On the other hand, it often becomes necessary in order to preserve order, and justifi-

able as a means of carrying out the will of the assembly, to decide questions of order without argument. When the presiding officer is perfectly clear, and knows he can satisfy the assembly, it is unwise for him to encourage a long debate before he expresses his own opinions.

10. If the presiding officer insists upon voting on an appeal (being otherwise entitled), he cannot, on any parliamentary principle, be prevented.

11. No second appeal can be entertained until the original appeal is disposed of.

12. A limitation of debate on questions of appeal after the Previous Question, is contained in the remarks concerning the Previous Question.

13. It is a breach of order in a presiding officer to refuse to put a question which is in order. Yet he is justified in declining to put questions obviously frivolous or tending to disorder, and he must not put irregular motions, or motions made at improper times. A conversation with the mover will generally avoid difficulty. A motion may be, parliamentarily speaking, in

order, but a breach of order because it violates constitution or law. In a *clear case* of this sort it must not be put. If a question of order is decided against a member, he cannot proceed, even in order, without leave; if decided in his favor, he must be allowed to proceed as if he had not been interrupted, and the floor cannot be *taken from him*, even for a motion to adjourn.

The Clerk or Secretary, and his Duties.

14. The duty of the recording officer needs not to be made the subject of rules. But it may be stated, in relation to the clerks or secretaries of *legislative bodies*, that they are independent officers of the assembly, and are generally sworn, and are not subject to the orders of the presiding officer, except those which are the voice of the assembly itself. They have exclusive custody of all papers in possession of the assembly, subject to an order of examination by a committee or by the speaker. The clerk would not be justified, except in an extreme case, in refusing to a committee of another branch leave to examine his

journal, or papers in his custody. He is in all cases subject to the will of the assembly whose officer he is, though not to the will of any unauthorized committee, or member of it.

The Journal.

15. The journal ought to be read each day or at each session; but it is in the power of the assembly to dispense with the reading, from day to day. It may be assumed to be correct or "approved," unless objection be made. It may be corrected, however, at any time, though a correction *may not* invalidate or change proceedings which it professes to record; that is to say, it may be too late to correct such proceedings. It may be examined by a committee of the assembly. It should always contain a statement of *things done*, but not, necessarily, of things attempted. On all matters, however, on which the sense of the assembly has been taken by yeas and nays, it should have a complete statement of the case.

Questions of Order to be noted by the Clerk.

16. Every question of order should be noted by the clerk or secretary, with the decision thereon, and inscribed at large on the journal. *In practice*, however, the clerk is not expected to note frivolous points, or those whose decision is obvious at once, or those arising again and again during the session; but only those which present new and important questions, or on which an appeal is taken.

Determining Motions by Count and by Tellers.

17. The presiding officer declares all votes; but if any member rises to doubt a vote, he orders a return of the number voting in the affirmative and in the negative, without further debate upon the question; and the members rise and stand till counted. If the rule allows or requires a count by tellers, two members are named, one on each side, to tell the members in the affirmative and the negative.

18. The requirement that the member who doubts a vote shall rise may be waived at the discretion of the presiding officer; but it is important to bear the principle in mind, for it may be usefully enforced in case some one not raising the doubt, wrongfully or inadvertently seeks to withdraw it.

19. The provision that there shall be no further debate on the question after the division is called for, is necessary for the preservation of order, as well as for fairness towards the opposing sides. In case the assembly evidently misunderstands the vote, "general consent," which dispenses with rules, can allow the debate to go on; or the calling of the yeas and nays will allow members to vote with due preparation. General consent is the consent of all present.

Mode of Putting a Question, &c.

20. The presiding officer should rise to put a question, or to address the House, so that the assembly may know when the question is about to be put; but he may read sitting.

Right of the Presiding Officer to vote.

21. In all cases the presiding officer, if a member of the assembly, may vote. I do not think it is well settled whether the speaker is liable to be called on to vote, in case of a tie or otherwise, like other members, and consider this statement sufficient for practical purposes. As a general rule, I suppose his preference is not to vote; and probably such is the preference of the assembly, unless there is a *tie*. If he has not availed himself of his privilege in an election by ballot, he cannot do so after the committee has reported, or is ready to report, without special leave.

Appointment of Committees.

22. The assembly has a right to appoint its own committees; but it is customary to delegate the power to its presiding officer, by rule.

23. Upon going into committee of the whole, the presiding officer calls some member of the assembly to the chair.

Taking of the Sense of the Assembly by Yeas and Nays.

24. It should be provided by a rule, that on all questions and motions the presiding officer shall take the sense of the assembly by yeas and nays, provided one fifth of the members present so require; and the call for the yeas and nays should be decided without debate. The roll may be called in alphabetical order or otherwise; and no member should be allowed to vote who was not upon the floor when his name was called, or before the roll-call was finished.

25. The provision that one fifth, or some other small proportion of a legislative body, may call the yeas and nays, is almost universal in deliberative bodies, and is provided for in the constitutions of some of the states. It will probably always remain, for, although it is frequently an annoyance to the majority, it is found indispensable, sooner or later, to all the members, and is a contrivance by which the people, or the constituents of a body, hold their representatives to an accountability, and one which they will not relinquish.

26. A call of the assembly for the purpose of ascertaining the number present, or a call for the yeas and nays on any question under debate, are neither of them "questions or motions," within the meaning of such a rule. To call the yeas and nays *upon* the yeas and nays would involve the body in interminable work. *From the necessity of the case*, certain things, which may seem to be permitted by rule, cannot be permitted without sacrificing all the objects of the assembly.

27. It sometimes happens that the meeting desires to get rid of the yeas and nays even after they are ordered; the progress of the measure under debate having done away with their significance. A majority can reconsider the demand, and then the call may be negatived. It is well to postpone putting the question on ordering the yeas and nays until the question under debate is about to be stated. By that time members understand whether they want them or not.

28. A call for the yeas and nays may be withdrawn by unanimous consent, even after they are ordered.

29. In a body invested with legislative powers

no member is allowed, under any circumstances, to vote or to change his vote after the result is announced from the Chair. If a member under such circumstances desires to have his opinion known, he may, if allowed, have a statement put upon the journal as to the way he *would have voted.* This principle must be insisted on in order to preserve the rights of those who prevailed in the vote, and to avoid evil precedent in cases where there would be no approach even to change in the result by admitting the objectionable proceeding. No member should be allowed to vote who is not inside the bar of the assembly. The clerk's table should not be visited by members or others during the roll call.

Order of putting Questions; Times and Sums.

30. The presiding officer propounds all questions in the order in which they are moved, unless the subsequent motion be previous in its nature; but an exception is generally made to the effect, that, in filling blanks, and in naming

sums and fixing times, the largest sum and longest time shall be put first. This is designed to obviate the difficulty arising in the naming of sums and times if they are treated as amendments. As a proposition can be amended only in the second degree, and as an indefinite number of sums and times may be suggested, it is better to treat motions of this sort as blanks to be filled in the bill, resolve, or order. It would sometimes seem better to adopt the opposite rule, namely, the smallest sum instead of the largest; but it is needful to have some uniformity, and on the whole the rule has been proved best in practice, in Congress and elsewhere.

31. "*Unless the subsequent motion be previous in its nature.*" Cases of this sort are common. One instance will be sufficient. A motion may be made to insert or strike out a section; then a motion to amend it; the last must be put first, because the assembly must first be allowed the opportunity to perfect, before they are called on to keep or to abolish. This principle will not apply in the case of a motion to adjourn to a particular time, which, though "previous in its

nature," cannot supersede a motion to adjourn, for reasons elsewhere given. This subject will be further spoken of under the head of AMENDMENTS.

Motions after they are stated by the Speaker; Power to withdraw a Motion to reconsider.

32. After a motion is stated or read by the presiding officer, it is deemed in the possession of the assembly to be disposed of by vote; but the mover may withdraw it at any time before a decision or before an amendment is moved, except a motion to reconsider. It is customary to prescribe by rule some time within which this latter motion must be made; and as the whole assembly, or a large part of it, may be said to have a right in such a motion, it must not be withdrawn by the mover after the time for making it has expired.

33. This limitation on the power of withdrawing motions perhaps needs explanation, at least in the language "before an amendment is moved."

If an amendment is moved, being first in order, it *becomes the motion before the assembly*, and cannot be got rid of by one who has moved what in such a case is the second proposition. If the first motion has been actually amended, it has passed out of the ownership, so to speak, of the one who moved it, and of course cannot be withdrawn by him.

"Privileged Motions;" or Precedence of Motions.

34. As a general rule, motions are put in their order; but the rule is subject to modifications embodied in the rules of deliberative bodies, and as now stated may be regarded as settled on parliamentary principles.

35. When a question is under debate, the speaker shall receive no motion, but to adjourn, to lay on the table, for the previous question, to postpone to a time certain, to commit, to amend, or to postpone indefinitely; which several motions have precedence in the foregoing order; and a motion to strike out the enacting clause

of a bill is equivalent to a motion to postpone indefinitely.

36. In practice, other motions, such as those relating to the time of taking the question, or relating to the time to which the assembly will adjourn when it adjourns, are received and acted upon; but this is under "general consent," expressed or implied. If objected to, any motions other than those named must be ruled out of order. The rule itself is necessary, so that the business in hand may be proceeded with in order and without confusion.

37. The motion *to lay upon the table* includes a motion to lay the orders of the day upon the table; and when it is desirable to drop temporarily any subject under debate and take up another, this is the proper motion to make.

38. A motion *to strike out the enacting clause* of a bill is a motion to "amend," and is therefore implied in this list of motions; and may be resorted to, like the motion to indefinitely postpone, as an additional chance for defeating the pending measure, leaving the vote on the further reading to be disposed of, if this fails. A motion

to amend by striking out the enacting clause would be equally useful. Its expediency is a question of "tactics."

39. The rule says, this is "equivalent" to a motion to postpone indefinitely. This means that the *result* is the same in the two cases, that is, if the bill is amended by striking out this clause, the presiding officer must announce that the bill is postponed.

40. Motions to reconsider votes rejecting or adopting amendments are also within the classification of motions to "amend," and are in order.

Reasons for the Order in which these Motions are put.

41. The motion to adjourn is placed first, because the assembly must always be able to terminate its session at the will of a majority, without the intervention of any other business. And it may be remarked here that any rule which seems to conflict with this indispensable right ought to be abrogated or liberally construed.

42. The motion to lay on the table is tempo-

rary in its nature, and the assembly may desire to avail itself of it rather than be forced to a vote before it is prepared; it also furnishes time for consideration before the previous question is ordered.

43. If the assembly is not willing to adjourn, and refuses to lay the subject on the table, the previous question may well be moved in order to test the willingness of the members to have a speedy decision. The effect of ordering the main question will be stated elsewhere.

44. To "commit" is a common motion in case the assembly desires further information or receive amendments from a committee, or for various other reasons; and this motion is put before the motion to amend, so as to give opportunity for further revision or consideration before any action is taken.

45. A motion to commit with instructions is not divisible, but a motion to amend by adding or striking out the instructions is in order.

46. Indefinite postponement is the last motion before the vote in passing or rejecting any proposition. Like the motion to amend by striking

out the enacting clause, it furnishes an opportunity to feel the temper of the assembly before the final vote. All the motions named after the previous question, are cut off if the main question is ordered, except the pending motion to amend, because it is assumed, that, if the assembly orders the previous question, it has made up its mind to finish the measure at once.

47. It has been at times customary in the House of Representatives of Massachusetts to put the question on all amendments sent to the Chair before the previous question is ordered, even though they have not been stated. This is contrary to good sense. If continued, it should be provided for by rule stipulating that the question should be fully stated before the question on the previous question is stated. On the whole the practice is bad. If the tardy amendment is important, opportunity should be allowed to consider it; if unimportant, universal consent will be all that is needful to allow it to be voted on. The rule may perhaps be dropped wisely in other than legislative bodies.

The Motion to lay upon the Table.

48. This does not apply to a proposition to "amend" or "commit," because it would be absurd to separate the incidental from the principal question, and the result is as easily attained by a *negative vote.*

49. *The Table*, and *the Speaker's or Presiding Officer's Table*, are not the same. The latter is the place for papers awaiting their turn to be disposed of in order.

The Motion to adjourn; also Motions to be decided without Debate.

50. A motion to adjourn is always first in order; and this motion, and the motions to lay on the table and take from the table, should be decided without debate.

51. A rule to the above effect is nearly universal, and seems necessary for the despatch of business, and no hardship can arise under its operation. The right of a body to adjourn without the delay consequent on debate, is one which

seems indispensable to freedom of action. This motion, not being subject to debate, cannot be amended by a proposition to adjourn to a specified time, which would be necessarily debatable. It will generally be easy to interpose a question as to time, and then to reject the motion to adjourn, which may be renewed after the interposition of any other business, — further debate being considered "business" in this sense. The interposition of other business, or the continuance of debate, before another motion to adjourn is made, is needful to secure against factious proceedings, and to allow the majority, with reasonable regard to the minority, to make an effort to go on with the business.

52. In addition to this limitation to debate it may be stated here, that, after both sides of a question have been put to the assembly, debate is not in order except by general, that is, universal, consent.

The Previous Question.

53. The previous question is provided for by rule. Its form is now settled in this country, and is as follows: "Shall the main question be now put?" After it is moved, all debate on the main proposition before the assembly is suspended until it is decided.

54. The effect of an affirmative vote on the previous question is to bring the assembly first to a vote on the amendments, and then upon the bill, or whatever other proposition may be pending, subject to the right of the assembly to adjourn. Although a motion to lay upon the table is, under the rule previously recommended, *put* before the previous question, if negatived it cannot be again interposed to prevent a decision. If after the previous question is ordered a motion is made to reconsider a vote on the rejection or adoption of an amendment, that motion must be put, though without debate; the reconsideration of an amendment being part of the question of amendment, and the right of reconsideration being important to allow members full opportu-

nity for deliberation, especially under circumstances of surprise. The matter of reconsideration is treated elsewhere.

55. When the assembly is acting on a motion to reconsider a decision, the previous question applies only to that, and must be moved again on the bill or other proposition the decision on which is reconsidered.

56. There is no way of avoiding an immediate vote after the previous question is ordered, except by an adjournment. A motion may be withdrawn after the previous question is ordered, provided it has not been amended, or provided that no amendment has been moved to it so as to take it out of the control of the mover. Of course this remark as to withdrawal does not apply to the bill or other main proposition, which is in the possession of the assembly.

57. The effect of a *negative* decision of the previous question varies according to the custom of various legislative bodies. The custom in the Massachusetts House of Representatives, to keep the proposition before the assembly until otherwise disposed of, that is, to treat it as if the pre-

vious question had not been moved, seems to me a good one, and where custom has not made it "parliamentary," it might be fixed by rule.

58. If the assembly adjourns after the previous question is ordered, proceedings are resumed at the same point at the next meeting.

59. It may be worth while to repeat, that motions to commit and postpone are "cut off" when the previous question is ordered.

60. All questions of order arising after a motion is made for the previous question are decided without debate, excepting on appeal; and on such appeal it is well to provide by rule that no member shall be allowed to speak more than once without leave of the assembly. This is to prevent unreasonable and vexatious delays.

Equivalent Questions or Motions.

61. When the negative of one amounts to the affirmative of the other, and *leaves no other alternative*, the decision of one concludes the other.

Rights and Privileges of the Assembly.

62. Members have an equal right to the floor, and when two or more rise at once, the presiding officer names the member who is entitled to it. No member should be allowed to speak more than once till the other members who have not spoken shall speak, if they desire to do so.

63. If it is thought expedient, chairmen of committees, or members having charge of bills, may be, by rule, invested with privileges, such as closing the debate, &c.; but I think such members have from their positions advantages enough without the addition of these. The course of modern legislation, and the preparation of bills in committees, are of such a character as to render the right to the last word in opposition quite as serviceable to the public interests as the right of the last word in advocacy of a measure.

64. The *privilege* of a member is the privilege of the assembly to which he belongs, and not his own; and the assembly must take notice of it when brought properly to its attention. And the member cannot waive it without leave. It does

not come within the purpose of this work to discuss further what are the privileges of members or of the assembly.

Privileged Questions.

65. I will state here that *privileged questions* are not to be confounded with *questions of privilege*. The latter have been spoken of in the preceding paragraph. A *privileged question* is one which has precedence over another by right, or rule, although it may have been entered or made after the motion not privileged. It generally relates to the order of business. A *personal explanation* does not necessarily belong to either of these classes of questions.

Decorum of Members; Relevancy and Irrelevancy.

66. Every member, when about to speak, must rise and respectfully address the Chair, confine himself to the question under debate, avoid personality, and sit down when he has finished. No

member should speak out of his place without leave. This is, more or less, " directory " in its character, and does not always call on the presiding officer for enforcement, except that part which forbids personality and compels the member to address the Chair. It is not always possible for a member to confine himself, or be confined, to his subject, and it seems often difficult for a debater to know when he has " finished." One of the commonest questions raised in an assembly relates to the right of a debater to discuss what seem to the objector to be irrelevant points. Questions of amendment, commitments, &c., are so closely connected with the main proposition, and the range of illustration or argument is so wide, that it does not seem practicable to lay down any general rule, except that which, as in the preceding paragraph, leaves the question in each particular case to the sense of the one who has the floor, and the discretion of the presiding officer.

Questions of Order.

67. No member speaking should be interrupted by another but by rising to call to order. Whenever an interruption is made, the presiding officer should ask the member who interrupts what is his purpose. If he has a question of order, it must be decided. If he merely desires to make an explanation, or to ask one, or to ask a question, or interject an argument in any shape (which he ought not to be permitted to do), the member having the floor ought to be asked if he yields it. If he does, he loses the *right* to it altogether. An experienced debater seldom loses anything by interruption; an inexperienced one ought not to be subjected to loss and discomfiture by any such event.

Breaches of Order.

68. When a member is guilty of a breach of order, he may be required by the assembly, on motion, to make satisfaction therefor; and should not be allowed to speak, except by way of excuse,

till he has done so. It is the duty of the monitor, or other person appointed for such purpose, to give notice to the assembly if any member persists in a breach of order or of any rule.

69. If a member is called to order by another for words spoken in debate, the words must be taken down, or he is not subject to censure. Notwithstanding this, the presiding officer, whose duty specially is to preserve decorum, may peremptorily call a member to order.

70. It is a breach of order to refer to the proceedings or opinions of the executive department, or of a co-ordinate legislative branch, for this reason, that the opinion of each House should be "left to its own independency." "It is highly expedient for the due preservation of the privileges of the separate branches of the legislature, that neither should encroach on the other, or interfere in any matter before them so as to preclude or even influence that freedom of debate which is essential to a free council." This does not apply to matters which have been officially communicated by the executive or the other branch. It has also been deemed a breach of

order (though, I judge, by none but stiff parliamentarians) to speak impertinently, or superfluously, or tiresomely. It is not in order to reflect on any proceedings of the assembly, unless with a view to annul the same; to allude to a member by name, or to arraign his motives. A member called to order, and decided to be not in order, cannot proceed, even in order, if objection be made, without leave of the House. To allude to a member by name is said to "tend to disorder;" but this cannot be so universally or generally, and the cases in which it does may perhaps be wisely left to the observation of the Chair, and rebuked without making a point of every infraction of the rule. An allusion to the co-ordinate branch or any of its members is, however, a graver matter, and to be more carefully guarded against, for although one branch has no power to *call the other to account*, it may yet *complain of it*, and such complaint may lead to unpleasant and troublesome consequences.

Reconsiderations.

71. For convenience, I have put in the shape of a rule what I deem a good practice, and not incompatible with parliamentary principles, as understood in this country, on the subject of reconsiderations.

72. When a vote is passed, except on motions to adjourn and to lay on and take from the table, it is in order for any member of the majority to move for a reconsideration thereof on the same or the succeeding day, and such motion, if made on the same day, shall be placed first in the orders of the day for the day succeeding that on which it is made; but if first moved on such succeeding day, it shall be forthwith considered. And when a motion for reconsideration is decided, that decision shall not be reconsidered, and no question be twice reconsidered. *Provided, however*, that a motion to reconsider a vote, upon any incidental or subsidiary question, shall not remove the main subject under consideration from before the assembly, but shall be considered at the time when it is made.

73. The reasons for exempting certain motions from reconsideration are these: —

A motion to adjourn, if negatived, can be renewed, with a proper interval; a reconsideration of the motion (carried) to lay on the table would be simply a motion to take from the table, and a reconsideration of a motion (negatived) to take from the table would be simply a motion to let the paper lie there.

74. A "member of the majority" means a member of the *prevailing party*. Thus, if a measure is lost by a tie, one hundred yeas to one hundred nays, for instance, one who voted "nay" must make the motion. In the case of a question requiring a vote of two thirds, if there are seventy yeas and thirty-six nays, and the measure is lost, one of the thirty-six is a majority member for the purpose of this rule.

75. A motion for the reconsideration of a *principal question* ought not to be made while the order of the day, or a special order, is under consideration.

76. "*Forthwith considered.*" This does not imply that it must be at once *determined;* the

motion is subject to postponement like other questions, but not to recommitment.

77. "*No question shall be twice reconsidered.*" It sometimes happens that a bill is passed, and that then, after reconsideration, it is killed. The question has arisen whether, the *result* of the two votes on the principal question being different, there can be a motion to reconsider the vote to reject (or a vote to pass, in an opposite case). Such a motion would not be in order; the question having been twice tried, this is all that fairness requires, and that a regard for the despatch of business will allow.

78. The *proviso* in the rule refers mostly to motions to reconsider votes on amendments. It is obvious that such questions cannot be postponed until another day. To do this would postpone the whole matter.

79. The question has arisen whether a reconsideration on an amendment can be moved after the previous question is ordered. I think it can, because the vote on reconsidering an amendment is a vote on the amendment itself. That is to say, the important right of two votes on such

questions cannot be cut off by the previous question. The amendment may be at first imperfectly understood, and may be the vital point. Of course, after the previous question is ordered, a motion to reconsider on an amendment cannot be debated, but deliberation may be in some degree attained by a call for the yeas and nays.

80. The motion to reconsider may be made and put, even if the paper be in the hands of the other branch; but if the motion prevails, it must be sent for and obtained before further action is taken.

Excusing a Member from Voting.

81. It is a good legislative rule that every member present when a question is put, when he is not excluded by interest, shall vote, unless the assembly for special reason excuse him; and that the member desiring to be excused shall make application before the assembly is divided, or the yeas and nays are called; such application to be accompanied by a brief statement of reasons, and to be decided without debate. With-

out a rule to this effect, the right to debate such a request could not probably be called in question.

Reducing Motions to Writing.

82. Every motion must be reduced to writing, if the Chair so directs. This mainly applies, however, to amendments and other complicated motions. It is convenient, even in other cases, to enable the Chair to "gain time."

Division of Questions; Motions to strike out and insert.

83. Any member may call for a division of a question when the sense will admit of it, and the Chair shall decide this question without appeal. A motion to strike out and insert shall be deemed indivisible; but a motion to strike out being lost, shall neither preclude amendment nor a motion to strike out and insert.

84. It seems to me safe to provide that the Chair may decide whether a question be divisible or not, without appeal, though this is contrary to

the general principle as to his powers. Mr. Jefferson's rule as to the divisibility of questions is as good as any that can be made: "A question, to be divisible, must comprehend points so distinct and entire that one of them being taken away the other may stand entire." The best way, however, to divide questions is by motion to amend.

85. An amendment may be divided after the previous question is ordered. It is hardly necessary to say that the question of the passage of a bill cannot be divided.

86. A motion to commit with instructions is not divisible; a motion to amend by striking out the instructions is the proper method.

Forbidding Members to vote, &c.

87. No member is permitted to vote, or serve on any committee, in any question where his private right is immediately concerned, distinct from the public interest. The enforcement and validity of this rule, in the present state of legislation in this country, depends on the personal

honor of the members, and (as to the appointment of committees) on the sense of propriety and the vigilance of the presiding officer. Too often the "private right" is considered by the member, and allowed by the presiding officer, to be the best claim to be put on a committee.

Committees of Investigation.

88. There is no valuable principle which requires or presumes that a member who proposes an investigation into any particular subject shall be placed on it, or that those who desire an investigation shall have a majority of the committee. The traditions, maxims, and precedents on this subject have very little value, having come to us from times widely different from our own.

Amendments not "germane."

89. There is no parliamentary principle involved in the practice on this subject, but a rule exists in some bodies that "no motion or proposition of a subject different from that under con-

sideration shall be admitted under color of amendment." It is not held to imply that motions shall not be made which will destroy the efficacy of the original proposition. The object of the rule is to prevent the attaching of two or more different questions together. A member who offers a proposition in good faith is entitled, under this rule, to a vote on it unembarrassed by other *subjects*, though he must submit to hostile amendments on the same general subject. The rule, if adopted by one branch of a legislative body, ought also to be adopted by the other, so that they may be on an equality. The absence of such a rule in the Senate of Massachusetts, some years ago, led to the attaching together of two incongruous bills, one of which had been rejected by the House; the other being not objected to by either branch. The House, having insuperable objections to the first, was compelled to submit to the loss of the other; and it afterwards adopted a rule that it would not consider an amendment to one of its own bills made by the Senate, which amendment is substantially the same as a bill once rejected by the House. Un-

der this rule, seldom brought into use, and which has the *appearance* of discourtesy, the custom is for the clerk to indorse on the amended bill (after a statement, and without a vote) that the amendment is non-concurred in, and to return the paper to the Senate for an opportunity to recede.

Unfinished Business.

90. The unfinished business, in which the assembly was engaged at the time of the last adjournment, should have preference the next day after motions for reconsideration.

Of suspending Rules.

91. No rule or order should be dispensed with, altered, or repealed, unless two thirds of the members present consent thereto. This rule is necessary in order that members may have a permanent guide for parliamentary action; and it would seem, that, if it be found desirable to change a rule after the beginning of the session, or perhaps of a year, in case of a society, the

rule itself should be reported on by a committee, and the alteration deliberately made and printed, and then remain until changed by the same process. It is very common to suspend the rules, or one or more of them. A motion to suspend which affects the business pending is always in order, but debate should be limited. [As it is often necessary that some special rules should not be suspended without unanimous consent, a clause to this effect should be added.]

92. A motion to "suspend" should state what rule, or what part of a rule, the mover desires to suspend.

93. Questions of parliamentary principle are not subject to "suspension." If a difference of opinion exists on these between the presiding officer and the assembly, it must be settled by appeal.

Priority of Business.

94. All questions relating to the priority of business to be acted upon shall be decided without debate. This is an old legislative rule. It seems to mean, that any proposition to take up a

matter out of its turn, whether it be on the Speaker's table or in the orders of the day, and to give it the preference to other matters, is not debatable. The reason for it rests on a similar principle to that which prohibits debate on the motion that a matter lie upon the table.

Petitions, Memorials, &c.

95. A petition must ask for something, and be not merely an argument, or a protest against something the petitioner does not like. A "remonstrance" is a *petition against* something asked for by another. A "memorial" is a petition giving reasons. It is not necessary that the thing asked for be within the power of the body to grant, to entitle it to reference or other respectful treatment.

96. Although the "right of petition" is secured by constitutions, it is subject to the rules of common sense. The petition is not entitled to be received unless respectful in terms, nor, as above stated, unless it asks for something, nor unless its signature or signatures are genuine, or are

vouched for. Votes of societies, or resolutions of meetings, countersigned by their officers, are not petitions beyond the names attached to them. Especially is this true of such as profess to represent thousands and tens of thousands of persons, who perhaps never heard of the pretended prayer. Petitions should be carefully examined by the member who presents them, who is liable to be imposed on by outside indorsement.

97. A petition should ask for *one thing*. If the petitioner wishes for two or more, he should prepare two or more papers, so that the proper committee may have charge of the matter, and so that, when a report is made, the assembly may know that no matter is left undisposed of in the hands of the committee. And if there are two or more branches of a petition, the committee in reporting on one should state, or give it to be understood, that they are reporting merely in part.

98. If a petition does not, in general, fulfil the conditions here stated, it ought to be handed back by the Chair to the member who presented it, for further examination.

Powers of Committees, and Reference of Subjects to them.

99. A committee of any assembly or society, whether it be a "committee of the whole," or a select, special, or standing committee, or by whatever name it may be called, has no power to report to the assembly on any subject which has not been specially referred to it. And a committee which has a name implying broad and general powers has, if possible, less wideness of authority and scope than one whose title implies a limitation to special matters. A petition, order, or bill, referred to a committee, is an order of the assembly to consider the prayer therein contained; and it is by virtue of this order implied in the reference, and not by virtue of the petition itself, or by virtue of anything in the name of the committee, that the committee proceeds to act, and it must confine itself strictly to the terms of the petition. If the petitioners find that they have not covered their entire case, they should petition anew, and have the subject more specifically referred either in that way or by order.

100. The other method of bringing matters to the attention of a committee is by special order; and such an order should be full and explicit. The reasons for keeping the committees strictly within their bounds may be again stated. The public reason is, that the constituents of the assembly have the right to know what the assembly is considering; and the assembly in its turn has a right to know what its agent is considering. The reason which more particularly commends itself to observation as relating to the assembly itself is, that there would be endless confusion in any body which should tolerate the admission of reports from committees on subjects not specifically referred. Business ordered to be done might be neglected; one committee might interfere with the functions of another; contradictory reports might be made, and the assembly would in fact lose its character as a deliberative and representative body. The same principle applies to societies, organized for whatever purpose.

101. An illustration of the strictness of this principle may be drawn from the practice of referring executive messages. Where they embrace

a number of distinct topics, they are divided and the several parts referred to different committees, with implied instructions to consider and report on these specific topics and on no others.

102. It is the duty of the presiding officer to call attention to any report which conflicts with this principle, whether the irregularity is taken notice of by any other person or not. And this is a matter which cannot be changed by a suspension of a "rule," for (it may be as well to state here as elsewhere) a principle of parliamentary practice cannot be suspended by vote, but if declared by the presiding officer, must be appealed from and decided one way or another, so that it may become settled, for the time being at least, what the practice is to be.

Orders of Inquiry.

103. It should be made the duty of each member of a legislative body, who moves that any committee be instructed to inquire into the expediency of amending an existing law, to point out clearly the amendment, which he deems expedient,

in writing, to accompany his motion, specifying the chapter and section of the statute referred to.

Reports from Departments, &c.

104. All reports from departments, commissions, or bureaus, may be referred to the proper committees; but such reference does not entitle the committees to report legislation thereon, unless the particular subject on which legislation is thought to be needful is pointed out by an order, and adopted in that form by the assembly.

Persons and Papers.

105. All orders giving authority to a committee to send for persons and papers must particularize the case in which the witness is required to testify, or in which the papers are to be used; and no general authority is given to any committee, joint or of either branch. All writs, subpœnas, and warrants for such purposes should give the substance of such order.

106. Let me add here that the assembly can-

not instruct a committee to do with a bill anything it would be contrary to rule or principle to do of itself.

107. Committees should report some *substantive proposition*, even in cases where they merely wish to declare that legislation is "inexpedient," or to give petitioners "leave to withdraw." For instance, "Resolved, That it is inexpedient," &c. This will prevent the assumed necessity, which confuses some persons, of making two questions, on the accepting and the adopting of a report. The committee is supposed to discharge itself, or to be discharged, when it reports; and if so, then the question comes on the substantive proposition which it lays before the assembly.

Proceedings in Committees.

108. It is not worth while to lay down any rules, hardly to make any suggestions. A committee cannot report anything, unless a majority finally agrees to the report, though for convenience a majority of those present may temporarily agree, and dispose of a question. For this pur-

pose I have found it somewhere stated, that when there is, for example, a vote of two and two, or four and four, the chairman, although he may have voted, may vote again to bring the committee to a temporary decision; but I see no good reasons for allowing this.

109. The minority of a committee cannot, *by right*, make any report, but must get formal leave to introduce one, if they desire to express their dissent.

110. Committees cannot sit, without leave of the assembly, during its session. It may be well to provide by rule that any number not less than two of a committee may call a meeting, provided the chairman neglects to do so.

111. It is understood that a committee has no power to exclude members of the assembly from its sessions. Of course it may adjourn, or postpone its work, till it can obtain privacy.

112. The first member named upon a committee is the chairman; but in the absence of rule the committee may elect a chairman.

113. It is usual to provide by rule that bills and resolves shall be written in a fair, legible

hand, without interlineations, on not less than one sheet of paper, with suitable margins and spaces between the several sections or resolves.

Introduction and Reference of Bills.

114. No bill or resolve shall be introduced to the assembly, unless reported by a committee, without having first been read for information, and special leave thereupon granted; and, when thus introduced, such bill or resolve should be committed to a committee, before it is ordered to a second reading. No parliamentary principle seems involved here. The reason, and a sufficient one, for the rule is, that time is saved, and deliberate action is secured by it.

First Reading of a Bill.

115. The first reading of a bill should be for information; and, if opposition be made, the question is, "Shall this bill be *rejected?*" If no opposition be made, or if the question to reject be negatived, the bill goes to its second reading

without question. I do not broadly state that this is parliamentary law, but it is a very old legislative and congressional rule, having been in force in the national House of Representatives since 1789.

116. I have known motions to be made to *amend* a bill to which objection is made on its first reading, and such a motion to be entertained. But the rule is explicit, and the reason for it clear enough. The debate will show whether or not the assembly is willing to consider the bill, or means to reject it without other consideration than the first discussion gives it. The debate will disclose any propositions to modify it, and if the assembly thinks it can be put in shape worth considering, it will say "No" to the question presented, "Shall it be rejected?" No freedom of debate or amendment (thereafter) is therefore infringed by the rule, while considerable may be gained in time by disposing of an unwelcome or impracticable proposition speedily. "Opposition" may be made by a member, or by a committee (in the case of a bill committed to them and reported on adversely), and in either

case the question must come on rejection. I think the rule — though I have had some question of this — prevents recommitment to a committee. If a member has a right to insist on his opposition and require a vote on rejection, a committee has equal right; and it would seem that either would be overruled before any commitment or recommitment can take place.

Additional Readings of Bills.

117. No bill or resolve should be passed without being read on three several days. This has been generally agreed on as giving no more than due time for deliberation and debate.

Bills rejected not to be again introduced.

118. It is a rule that when any bill, resolve, resolution, order, petition, memorial, or remonstrance has been finally rejected, no other, substantially the same, shall be introduced by any committee or member during the session. This

does not exclude matters of the same sort from coming from the other branch. The rule itself is almost indispensable, for reasons which hardly need to be stated. If any great emergency exists requiring dead bills to be revived, the power to suspend rules will be quite sufficient, and instead of limiting the inflexibility of the rule, it would be well if it could be made more inflexible. It is a crying evil that subjects which the public have reason to believe have been finally disposed of are so frequently revived months afterwards. The consistency of the assembly, the avoidance of contradictory action, tending to throw suspicion on the character of the body for integrity or clearness of purpose, are additional reasons for guarding against the practice forbidden by this rule.

Amendments.

119. The principles which govern amendments are, with few exceptions, matters of established usage, founded on the necessities of the assembly in the speedy, safe, and equitable transaction of

its business. I shall here, in as brief a way as is possible, state the principles and best usage as to amendments; and it is important to bear in mind that it is possible that some deliberative bodies have adopted rules incompatible with sound parliamentary principles on this subject, as well as on some others.

Limit to Amendments, in Degree.

120. An amendment to a bill or other proposition cannot be amended beyond the second degree; that is to say, if an amendment is moved, an amendment to that amendment is admissible, but nothing beyond, in that direction. If the amendment to the amendment is agreed to, it becomes a part of the amendment first moved; and the last named is then susceptible of a new attempt to amend; and so if the amendment to the amendment is negatived. And this process may be repeated, unless the will of the assembly intervenes by the previous question, or in some other way.

Amendments "germane."

121. The rule, that "no motion or proposition of a subject different from that under consideration shall be admitted under color of amendment," does not preclude amendments which change the intention of the first mover. The Chair cannot suppress a motion on this last ground. There is no hardship in admitting this class of motions, for the assembly is supposed to know what it wants, and will reject them if it desires to do so.

Propositions to be perfected before a Vote is taken.

122. If a bill or section is under consideration, and a motion is made to amend it by substituting, in whole or in part, another bill or another section, and if amendments are offered to both bills, or both sections, these last must be disposed of; the principle being that both propositions should be perfected, or put in shape, before the question is put either on substituting the one or on sup-

pressing the other. The friends of a bill or section, in other words, must have the privilege of selecting the most advantageous form for it, before it is liable to be suppressed by substitute; and the friends of the amendment must have the privilege likewise of putting their own words in as favorable a point of view as they desire, before the question is put on substituting.

123. Another reason for this is, that, after the assembly has voted to insert certain words in place of certain other words, the words inserted must *stand*, unless there is a reconsideration, or unless the language is restored or changed at another stage. So, if the assembly has negatived the motion to insert, the original words must *stand* (if not reconsidered), subject to being struck out or changed by another amendment after the first is disposed of, or at another stage.

124. When the assembly has agreed that words shall not be struck out, it is irregular to propose to strike out a part of them, *for the assembly has pronounced in their favor;* but words may be added, and then a motion to strike out the original words, with the added words, is in

order, unless, indeed, the words added do not change the meaning of the original. Questions of this sort are to be settled by reference to the *principle.*

125. *Amendments reported by a committee* have precedence over those moved by members; with this exception: amendments come in the order they are moved, unless the bill be considered by sections.

126. *The motion to strike out and insert not divisible.* The reason for this is, that, if you allow the question to be divided, you must necessarily allow the words proposed to be inserted to be amended, if such a motion is made; and hence the mover of the motion to strike out and insert has a right to know what will take the place of the words he proposes to strike out, and whether he will then desire to have them out or not. He is otherwise at a disadvantage to which he ought not to be put. The assembly is entitled to know also whether the words proposed to be struck out shall stand or not, so that it may judge of the effect of the words to be inserted.

127. A motion to "amend by striking out" is

to be put in that form, and not, "Shall the words stand?"

128. *When a bill is ordered to be considered by sections*, and the Chair has called on the members for amendments to each section, he will put the question, "Shall the section stand?" but it will nevertheless be in order to go back afterwards, and amend a section which has been thought finished. Of course, after the sections are disposed of, by agreement or disagreement, the question comes on the entire bill or other proposition.

129. These are all the principles in relation to amendments, in addition to those which have been elsewhere stated, which I have thought it advantageous to give. Hundreds of pages might be occupied in stating examples, real or supposititious, and the experience of ten years more might furnish materials enough for additional hundreds. In fact, the number of practical questions is *endless*, and new ones constantly arise in the experience of clerks and presiding officers. The rules ought to be liberally construed to carry out the purpose of the assemblies; but care

should be taken not to set bad precedent by violating the *principles* which I have tried in all cases to set forth.

Right to have Papers, &c., read.

130. The right of every member to have every bill read on which he is called to vote cannot well be expressed in a rule, or in any other way, in fact; for in extreme cases, for instance, where there is an obviously factious or mischievous purpose in requiring bills to be read, it must, from the necessity of the case, be subject to the right of the assembly to proceed with the vote. The matter must be left without much attempt at dogmatic statement, and precedents are of no value on such a point. It is an error to suppose that the right to have journals, papers, &c., read, is an "unalienable" one.

Titles and Preambles of Bills.

131. The title of a bill should state fully, yet concisely, the subject-matter; and it is not suffi-

cient for it to state that the bill is to repeal, amend, or change any particular previous statute. This is to provide for giving information to those who have occasion to look for the bill in the indexes of the laws. Furtive expressions, such as "and for other purposes," ought to be avoided, if possible.

132. The title of a bill is a separate question to be determined after the bill is passed, and it is known what shape it has taken. The same remark applies to preambles, when they are deemed necessary.

Special Order of Business.

133. A special order may be called for by any member, but may afterwards be postponed by vote. Where there are two for the same session or day, the first ought to be finished before the second is taken up. A safe rule is to say that the expectation of the assembly ought to be carried out upon such questions, including the purpose of the committee or the mover.

Amendments between the two Houses.

134. To prevent hasty and inconsiderate action on matters which may not be well understood at once, and to avoid long debates, as well as decisions likely to be reversed on information which a committee could give, it will be well to provide that — all amendments proposed by the [naming one branch] and sent to the [naming the other branch] for its concurrence, shall be committed to the committee who reported the measure proposed to be amended, unless such committee be joint.

135. On the general subject of amendments between two branches of a legislative body, the following observations are all which I deem necessary. The process of amending a bill which comes from a co-ordinate branch is the same as that of amending an original bill; but in the former case the amendments are attached to the bill, and not incorporated into it, for opportunity must be given to the branch which originates the bill to say whether it agrees with the proposed amendments or not.

136. If it agrees, no further question arises, and the bill passes in the form agreed upon. If it agrees in part and disagrees in part, it gives notice to that effect by indorsement on the bill, or otherwise; and so, if it disagrees in the whole. The part agreed to remains in the bill, and the part disagreed to is subject to further action.

137. A bill returned with notice of disagreement is taken up, and the question then is, whether the branch whose amendment is disagreed to will recede or insist. If it recede, there is an end. If it insist, it will notify the other branch. In this condition the bill cannot be postponed or laid upon the table, except with the purpose of ultimately taking it up again and returning it to the branch which has amended it, which has a right in the bill, — the right, that is to say, to have it passed, and to recede from its action, if necessary for that purpose. There is, however, a limitation to this principle. *When an amendment*, sent down by one branch to the other, *invades the privileges of the branch whose bill is amended*, the bill may be laid aside, or postponed indefinitely.

138. When the question is before the assembly whether it will recede or insist, both motions may be made, and the one must have precedence which tends to bring the two branches soonest to an agreement. A motion to recede which is negatived is equivalent to a vote to insist; and *vice versa*. A motion to recede has precedence of a motion to adhere, because the way to agreement should be open as long as possible, and because a vote to adhere implies a position of unfriendliness towards the action of the other branch, though it is not necessarily to be so held.

139. The body whose bill is amended has also another right besides that of agreeing or disagreeing. It may agree to an amendment *with an amendment*, provided it can attach its proposition. But it cannot amend any part of the bill which has not been changed. That is to say, both branches having agreed to the main body of the bill, the only question being on certain specific alterations to its parts, neither branch can begin *de novo*, and amend other parts. The reason for this is the necessity of considering a proposition as agreed on and finished which has passed

through the usual and the only needful parliamentary processes to insure against hasty and inconsiderate action. It must be admitted, however, that there is a limitation here to a certain extent. Parts of the bill which both branches have agreed to must necessarily be subject to amendment, *if any of such parts need to be changed, in order to make them consistent and congruous with the adopted amendments.* Mr. May says: "Neither house may at this time leave out or otherwise amend anything which they have already passed themselves; unless such amendment be immediately consequent upon amendments of the other house, which have been agreed to, and are necessary for carrying them into effect."

140. It is perhaps necessary here to observe, that, in considering amendments between two houses, the proposition of the amending house, being the only part of the text to which it has agreed, becomes the original text of the bill for the purpose of further amendment; and therefore the principle as to the inadmissibility of amendments beyond the second degree applies to such parts of the bill.

141. If both houses vote to "adhere," the one to its amendments, and the other to its non-concurrence, the bill fails. The adherence of one branch alone does not produce this effect.

142. If the processes described fail to bring the houses to an agreement, and an agreement is desirable, there remains the committee of conference.

Committees of Conference.

143. Committees of conference consist of an equal number of members on the part of each house, representing its vote; and their report, if agreed to by a majority of each committee, is made to the branch asking the conference, and may be either accepted or rejected; but no other action should be had, except through a new committee of conference.

144. The above is the rule in Massachusetts on this subject. The theory of two branches is, that each has an absolute negative upon the other. Conference committees are the representatives and agents of the two houses, and conse-

quently their reports must be agreed to by a majority of the two branches of the committee. When appointed, each of them must represent the vote of its own branch; otherwise one branch is at the mercy of the other when the conference meets. And although the committee meets in order to agree, yet the theory must always be, that *they are at issue up to the point of final agreement.*

145. Committees of conference ought to be subject to instructions, for the subjects referred to them are, often of necessity, and generally by contrivance, complicated, so that it is impossible for them to represent the opinion of the branches without such instructions. This will be obvious when it is considered that the disagreeing votes may be numbered by tens and hundreds.

146. Committees of conference have nothing to do with any parts of the bill except those which are the subject of disagreement; and even if they are at liberty, in any event, to go outside of these parts, they cannot do so without orders, for, like all other committees, they are the creatures of the houses which appoint them. This remark is

subject to the modification just made as to the necessity of perfecting a bill, if in any particular an amendment is needed to make it congruous with amendments which may have been arrived at.

147. The provision that the report of a conference committee must be accepted or rejected in whole, and not in part, was no doubt found necessary; because these committees are essentially compromise bodies, and it would be difficult to make the two branches of them agree if a part of their report should be liable to be accepted and a part rejected.

148. The rule implies, that, after a conference committee is appointed, neither branch can recede. This would seem to be wrong, as the object of the committee is to come to an agreement. *But such is not always the object.* On the other hand, one branch, having agreed to a bill, may afterwards conclude that it ought not to pass, and may have acted to that end all through its votes on the amendments, and through its action in relation to a conference; and it may desire to reserve the right, which it has under the rule which I have given, to destroy a measure by

refusal to have a new committee, or by final disagreement if it can do so in no other way.

Committee of the Whole.

149. It is commonly provided by rule that the rules of proceeding in the assembly shall be observed in a committee of the whole, so far as they may be applicable. A motion to rise, report progress, and ask leave to sit again, is always first in order, and is decided without debate, it being analogous to the motion to adjourn in the assembly itself.

150. It is generally agreed that the previous question is not in order in committee of the whole, and also that the yeas and nays are not to be called. The last clause of the foregoing paragraph, if made a rule, precludes the necessity of the previous question; and the votes in committee being, so to speak, tentative, and not to be held as committing members finally, it is not thought proper to bind them by the roll-call.

151. If a message is ready to be delivered

during the session of the committee of the whole, the House ought to resume its own sittings.

152. The committee of the whole cannot punish breaches of order, but must report them to the House.

153. The presiding officer should remain in the committee while it is in session, so that he may be able to resume the Chair at any time and receive the report.

154. The parliamentary rule, that committees shall consider no subjects that they are not specially ordered to consider, applies to the committee of the whole, as well as to special, select, or standing committees.

155. The amendments agreed upon in committee of the whole are first in order in the assembly. They may be considered as adopted by it, unless a vote is called for, — the matter being fully stated and understood.

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